

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ALEX J. GLENN

v.

FELLS COMMUNITY CENTER

NO. 01-CV-4232

ORDER and MEMORANDUM

AND NOW, this 23rd day **of** October, 2002, upon consideration of the Defendant's Motion for Summary Judgment (Docket #9) and this Court's Order that the plaintiff must file an opposition to the defendant's motion for summary judgment, and the plaintiff's **lack of** response, and having reviewed the record, it is hereby Ordered that said motion is Granted in part and Denied in part for the reasons stated below.

The plaintiff instituted this suit against his former employer, Fells Community Center, **on** August 30, **2001**, claiming that his supervisor violated his civil rights. Mr. Glenn, an African-American man, alleges in his pro se complaint that Mr. Peter Kane, his white supervisor, discriminated against him by firing him and making comments that he would get rid of "you people" one by one. Mr. Glenn alleges that several other African-American people were fired by this supervisor, and that

the supervisor does not like him because he was hired by a different supervisor. Thus, it is unclear if the group to which Mr. Kane referred when he said "you people" was African-American employees or the employees whom Mr. Kane did not hire himself. The plaintiff does not claim a violation of any specific statute.

The defendant filed a motion for summary judgment on February 19, 2002, arguing that the plaintiff had failed to exhaust administrative remedies under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5 et seq. ("Title VII"), as well as the Pennsylvania Human Rights Act ("PHRA"). The Court held a conference with the pro se plaintiff and the defendant on March 22, 2002.

During the conference, the plaintiff stated that he had not filed a claim with the EEOC or the PHRC. The defendant agreed to put the case in suspense for three months to give the plaintiff time to exhaust his administrative remedies.

On July 10, 2002, the defendant informed the Court that the plaintiff had not filed a claim with any administrative agency and asked the Court to take the case out of suspense and decide its motion for summary judgment. On September 4, 2002, the Court ordered the plaintiff to respond to the motion for summary judgment by September 20, 2002. The plaintiff has not responded in any way to the Court's order.

In order to bring a Title VII claim, a plaintiff must first file a charge with the Equal Employment Opportunity Commission (EEOC) within 180 days of the alleged unlawful employment practice. See 42 U.S.C. § 2000e-5(e)(1). If a plaintiff files with a state or local agency first, he or she must file a charge with the EEOC within 300 days of the unlawful practice, or within 30 days after the state and local agency has terminated proceedings, whichever is earlier. ~~See id.~~

In Pennsylvania, there is no requirement that plaintiffs file with the state or local agency in order to bring a Title VII claim. See Woodson v. Scott Paper Co., 109 F.3d 913, 926 (3d Cir. 1997). In order to bring a PHRA claim, though, a plaintiff must file a charge with the Pennsylvania Human Rights Commission within 180 days of the alleged act of discrimination. See 43 Pa. C.S.A. §§ 959(a) and (g).

A plaintiff's failure to file a charge in a timely manner, or even to file at all, does not divest the court of jurisdiction over his or her claim. See Robinson v. Dalton, 107 F.3d 1018, 1021 (3d Cir. 1997). The exhaustion requirement is not jurisdictional; it is akin to a statute of limitations and is subject to equitable tolling.

The plaintiff has not exhausted his administrative remedies, even though the Court gave the plaintiff additional

time to do so. The Court, therefore, will grant the defendant's motion to the extent the complaint can be construed to be based on Title VII or the PHRA.

There **is** another theory of relief, however, that does not require the exhaustion of administrative remedies.

Termination on the basis of race is also actionable under 42 U.S.C. § 1981. At the conference, the Court discussed the possibility of a claim under this statute and the defendant acknowledged that it was a possible theory of liability.

This statute provides that all citizens shall have the same rights as are enjoyed by white citizens to make and enforce contracts, which includes the termination of contracts. See Patterson v. McLean Credit Union, 491 U.S. 164, 181 (1989); Young v. International Telephone and Telegraph, 438 F.2d 757, 761-63 (3d Cir. 1971); McCleave v. R.R. Donnelley & Sons Co. et al, 02-CV-1740, 2002 U.S. Dist. LEXIS 19322 at *8 (E.D. Pa. Oct. 9, 2002); Campbell v. Grayline Air Shuttle, 930 F. Supp. 794, 800 (E.D.N.Y.1996).

Turning to the merits of plaintiff's potential § 1981 claim, he must plead (1) that he is a member of a racial minority; (2) that the defendant intended to discriminate on the basis of race; and (3) the discrimination concerned an activity enumerated in section (b) of the statute. 42 U.S.C. § 1981.


Plaintiff alleged in his complaint that he is an African-American man and that he believes that Mr. Kane, his supervisor at defendant Fells Community Center, intended to discriminate against him on the basis of race. He also stated that Mr. Kane's discrimination against him resulted in the termination of his employment contract.

Termination of contracts is enumerated in 42 U.S.C. § 1981(b). See Larmore v. RCP/JAS Inc. et al, 97-CV-5330, 1998 U.S. Dist. LEXIS 7403 at *9 (E.D. Pa. May 19, 1998). The plaintiff has thus alleged all the necessary elements of a 42 U.S.C. § 1981 claim.

The defendant does not challenge the fact that the plaintiff is African-American and does not discuss whether his claim is appropriately heard under §1981. The defendant does dispute the second of Mr. Glenn's allegations, though, and indicates that there were other reasons the defendant fired him that had nothing to do with racial animus against him. Defendant's Motion for Summary Judgment, Exhibits B, C, and D (presenting the testimony of three other employees at defendant Fells Center that plaintiff damaged property at the Center and the written policy of the Center to terminate employees who damage property).

Thus, there is a dispute about a material *fact*, making summary judgment inappropriate. Defendant's motion regarding this claim is denied.

BY THE COURT:


MARY A. MCLAUGHLIN, J.